



The moving party should prevail only if the material jurisdictional facts are not in dispute and the moving party is entitled to prevail as a matter of law. Trentacosta, supra, 813 F.2d at 1558. A district court order dismissing a case on the grounds that the undisputed facts establish a lack of subject matter jurisdiction is a legal determination subject to de novo appellate review. Revene v. Charles County Comm'rs, 882 F.2d 870, 872 (4th Cir.1989); Shultz v. Dept. of the Army, 886 F.2d 1157, 1159 (9th Cir.1989).

Richmond, Fredericksburg & Potomac R.R. Co., 945 F.2d at 768-69.

Additionally, Plaintiff is reminded that in order to survive a 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be granted, Plaintiff's "complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'"

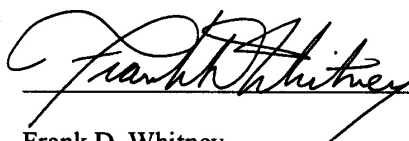
Ashcroft v. Iqbal, \_\_\_ U.S. \_\_\_, 129 S. Ct. 1937, 1949 (2009) (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)).

While Plaintiff has already timely filed a response to Defendants' Motion to Dismiss on July 2, 2010, the Court wanted to provide Plaintiff the opportunity to supplement his response, if desired, in light of this notice. Plaintiff may, but is not required, to supplement his response. Plaintiff need not submit a restatement of his earlier arguments, as those arguments will already be considered by the Court. **If Plaintiff chooses to file a supplement to his response, Plaintiff should file such a supplement no later than Wednesday, July 21, 2010.** Defendants shall have until **Friday, July 30, 2010**, to file a reply.

The Clerk is directed to send a copy of this Notice to Plaintiff at 1221 Brook Farm Lane, Charlotte, NC 28214, which is Plaintiff's address of record, and to counsel for the Defendants.

IT IS SO ORDERED.

Signed: July 7, 2010

  
Frank D. Whitney  
United States District Judge

